

Remarks:

In the May 18, 2004, Office Action, the Examiner noted that Claim 188 was a duplicate of Claim 187.

Applicants' arguments with respect to the previous rejections were found persuasive and the previous rejections were withdrawn. Applicants thank the Examiner for his consideration of the arguments in the previous Amendment D (filed on March 4, 2004).

On the merits, Claims 117-120, 123-127, 131-133, 145, 189, and 191 (including independent Claims 117, 145, and 191) were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Taheri, evidenced by Kamp and Ferrell, in view of Bell, Jr. and Kraus. Claims 121, 122, 135, 136, and 190 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Taheri, evidenced by Kamp and Ferrell, in view of Bell, Jr., Kraus, and May. Claims 128-130 and 134 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Taheri, evidenced by Kamp and Ferrell, in view of Bell, Jr., Kraus, and Hayashi et al. Claims 187 and 188 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Taheri, evidenced by Kamp and Ferrell, in view of Bell, Jr., Kraus, and Provan et al. Finally, Claim 137 (the fourth independent claim) was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Taheri, in view of Provan et al., Bell, Jr. and Kraus.

Applicants have revised Claims 119-136 to correct typographical mistakes inadvertently introduced in Amendment D (filed on March 4, 2004). Applicants have amended Claim 188, which was previously identical to Claim 187. Applicants greatly appreciate the Examiner's notation of this issue.

Applicants have also amended each of independent Claims 117, 137, 145, and 191 to clearly indicate that the areas of structural weakness are located intermediate the fold in the hood and the ends of the hood. This amendment is believed to more clearly define the present invention over the Taheri reference cited by the Examiner by eliminating a potential ambiguity in these claims.

Applicants' invention is a reclosable bag made of a sheet of web material which forms the sides, the bottom, and the tear-off portion of the reclosable bag which is used to provide a tamper-evident seal. In Applicants' invention, after the tear-off portion is removed, the reclosable fastener remains attached to the bag to allow the bag to be reclosed and extends above the remaining web material. These limitations are present in each of the four independent claims in the present patent application (Claims 117, 137, 145, and 191). The references cited by the Examiner quite simply do not teach these limitations of the claims of the present invention. Applicants' design is also a side-filled bag (which limitation is also not taught in the cited references), and includes a gusseted bottom.

The prior art cited by the Examiner is not believed to teach or suggest the invention as presently claimed. The primary reference cited by the Examiner is the Taheri reference, with the other seven references being used to teach relatively small details of the claims. The Taheri reference discloses a single-use plastic bag with a tamper-evident closure. Contrary to the Examiner's assertion that it is reclosable, once the bag taught in Taheri is opened, it is destroyed and is not reusable. The Examiner points to the embodiment of Taheri taught in Figs. 12 through 14, and indeed this is the only embodiment of Taheri that uses a removable tamper-evident closure.

However, the specification of Taheri describing the operation of the embodiment taught in Figs. 12 through 15, as well as the drawings, clearly indicates that in order to remove the tamper-evident closure (the flap 300), the bag 300 itself is destroyed in the process. The Examiner has apparently overlooked Fig. 15, which clearly shows the same embodiment and illustrates how the tamper-evident closure (the flap 300) is removed to allow access to the bag 300. The Taheri bag has sections of reduced thickness 350 located in the first and second walls 310 and 312, and a discontinuity 370 located in the flap 330. The sections of reduced thickness 350 are not permeable (to maintain the ability of the bag 300 to seal contents inside), while the discontinuity 370 in the flap 330 may be perforated. In order to remove the flap 330, which is the tamper-evident structure employed by Taheri, the entire top portion of the bag 300, including the first and second

closure elements 320 and 322, is torn off, as clearly shown in Fig. 15. Once the top of the bag 300 has been removed, it is clearly unfit for further use.

This is not surprising or unexpected, since the intended use of the Taheri bag 300 shown in Figs 12 through 15 is for forensic evidence or a laboratory sample, which is clear both from the context and the inclusion of a pouch 324 to contain paperwork, an addition which is manifestly unnecessary if the purpose of the bag 300 was to contain food (rather any printing would be on the surface of the bag itself). While the Background of the Taheri reference indicates that bags taught could be used for food, such applications are for the earlier embodiments which do not have the tamper-evident feature.

The alternate embodiment of Taheri illustrated in Fig. 16 deletes the sections of reduced thickness 350, but in this embodiment the flap 330 is not removable, and may be opened rather than be removed. It appears that this embodiment would be rather difficult to use, since tearing along the discontinuity 370 would not be particularly convenient.

Thus, it is clear that the Taheri reference does not teach a hood having a tear-away portion which may be removed to expose a fastener remaining on the bag, as clearly claimed by the four independent claims pending, namely Claims 117, 137, 145, and 191.

The other references cited do not teach the construction taught by the claims of the present invention either. The Kamp and Ferrell references are cited merely to teach alternate ways of attaching fasteners, and do not teach or suggest a bag construction even

remotely similar to that of the claims of the present invention. The Bell, Jr. reference is cited merely to teach a bag with a gusseted bottom, and does not teach or suggest the limitations of the present claims. The Kraus reference does not even teach a reclosable bag, but rather teaches a tube. In addition, the Kraus device is stated to be made by extrusion, is not a bag at all, and does not teach any type of tamper-evident mechanism. Kraus has only a single opening, at the top of the tube, and is clearly unusable to store food in. Additionally, the Kraus tube may only be filled from the top. Combining the tube of Kraus with the bag of Taheri would quite simply not be done by one skilled in the art.

The May reference is cited merely to teach a bag with a peelable seal, and does not teach or suggest the limitations of the present claims. The Hayashi et al. reference is cited merely to teach a bag with a nonlinear tear area, and likewise does not teach or suggest the limitations of the present claims. Also, both the May reference and the Hayashi et al. reference are cited only with respect to dependant claims. Finally, the Provan et al. reference is cited merely to teach a bag with a zipper arrangement, and also does not teach or suggest the limitations of the present claims.

The claims of the present invention clearly include limitations not taught or suggested by any of the five different combinations made in the May 18, 2004, Office Action, even though each of these rejections include four or five different references. The areas of weakness in the hood are clearly defined to be intermediate the ends of the

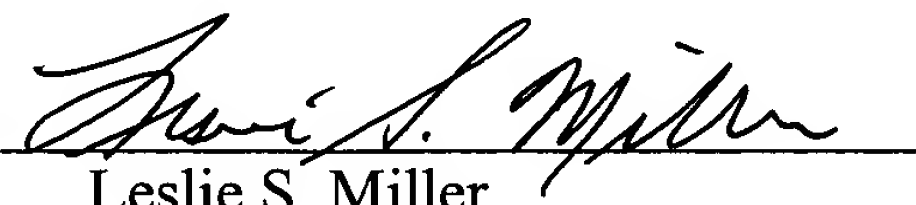
hood and the fold, and the fastener portions are defined to be coupled to the ends of the hood. Accordingly, it is evident that when the hood is torn off, the fastener will remain attached to the ends of the hood, which in turn extend from the side panels of the bag. Additionally, the present invention as claimed is clearly a side-fill bag, and since none of the cited reference teach such construction, it is apparent that this is an additional distinction of the claims of the present invention which distinguish it over the combinations of the May 18, 2004, Office Action. Accordingly, Applicants' invention as presently claimed is clearly patentable over the art cited in the May 18, 2004, Office Action.

In view of the patentably distinguishing features of Applicants' invention as presently claimed in the independent claims, there is little need for additional arguments against the combination rejections made by the Examiner as to the dependent claims. Applicants do, however, wish to point out for the record that they believe that the Examiner has again used a hindsight-based obviousness test in all five of the Section 103 rejections which has been repeatedly rejected by the Federal Circuit (as well as the Board of Patent Appeals and Interferences). The proper analysis is whether there is something in one of the prior art references which are being combined which suggests the combination, and in none of the five Section 103 rejections did the Examiner point out such a teaching or suggestion supporting the combination. Rather, the Examiner's justification for the combination is to assert that one skilled in the art would just make the

combinations. This is little more than using Applicants' invention as a pattern for a jigsaw puzzle and finding pieces from multiple unrelated references. For this additional reason, the rejections of the independent claims are believed to be untenable.

Applicants believe that the Claims 117-137, 145, and 187-191 as amended are patentable at this time. Accordingly, these claims remain pending following entry of this Amendment, and are in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY 
Leslie S. Miller
Attorney for Applicants
Registration No. 30,662

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

(414) 298-8321

Customer No. 22922

MW/1134873